

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

Stephanie L Alves, et. al.,

Plaintiffs,

v.

Public Utility Commission, et al.,

Defendants.

Case No. 2:24-cv-02122-JAD-BNW

**ORDER and REPORT AND  
RECOMMENDATION**

Before this Court are pro se Plaintiffs' applications to proceed *in forma pauperis*. ECF Nos. 15 and 16. Plaintiffs submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, their request to proceed *in forma pauperis* will be granted. This Court now screens Plaintiffs' complaint as required by 28 U.S.C. § 1915(e)(2).

**I. SCREENING STANDARD**

In screening a complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint is frivolous if it contains "claims whose factual contentions are clearly baseless," such as "claims describing fantastic or delusional scenarios." *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only

1 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of  
 2 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.  
 3 2014) (*quoting Iqbal*, 556 U.S. at 678).

4 Title 42 U.S.C. § 1983 provides that “[e]very person who, under color of [law], subjects,  
 5 or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights,  
 6 privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured  
 7 in an action at law . . . .” Section 1983 does not create any substantive rights, but it provides a  
 8 method for enforcing rights contained in the Constitution or federal statutes. *Crowley v. Nev. ex.*  
 9 *rel. Nev. Sec’y of State*, 678 F.3d 730, 734 (9th Cir. 2012). To state a claim under 42 U.S.C.  
 10 § 1983, a plaintiff must allege “(1) the defendants acting under color of state law (2) deprived  
 11 plaintiffs of rights secured by the Constitution or federal statutes.” *Williams v. California*, 764  
 12 F.3d 1002, 1009 (9th Cir. 2014) (quotation omitted).

13 Generally, private parties are not acting under color of state law. *See Price v. Hawaii*, 939  
 14 F.2d 702, 707–08 (9th Cir. 1991). However,

15 conduct of a private individual constitutes state action when there is a such a close  
 16 nexus between the State and the challenged action that the individual’s conduct  
 17 may be fairly treated as that of the State itself, such as when the nominally private  
 18 actor is controlled by an agency of the State, when it has been delegated a public  
 function by the State, when it is entwined with governmental policies, or when  
 government is entwined in its management or control.

19 *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1150 (9th Cir. 2011) (quotations  
 20 omitted). Further, “[a] private individual may be liable under § 1983 if she conspired or entered  
 21 joint action with a state actor.” *Crowe v. Cty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010)  
 22 (quotation omitted).

## 23 **II. ANALYSIS**

24 Pro se Plaintiffs sue the Public Utilities Commission, Nevada Power Company d/b/a NV  
 25 Energy, and the City of Las Vegas, alleging that their power was turned off without an  
 26 opportunity to be heard. It appears the PUCN turned the power off after a previous tenant refused  
 27 to pay an outstanding bill. As best as this Court can tell, Plaintiffs complained to the PUCN in an  
 28 attempt to explain that the bill belonged to Mrs. Rogers (and not them) and the PUCN scheduled

1 a hearing on October 29, 2024. Plaintiffs allege that they were not allowed “to preset their side of  
 2 the story” at that hearing but that their case was presented by a PUCN staffer. ECF No. 14 at 5. In  
 3 turn, Plaintiffs allege that the PUCN decided not to turn the power back on and, as a result, the  
 4 city started an eviction proceeding.

5 The amended complaint alleges the following causes of action: (1) violation of the  
 6 Fourteenth Amendment’s due-process clause, (2) violation of the Fourteenth Amendment’s equal-  
 7 protection clause, (3) violation of the Administrative Procedure Act, (4) coercion, and (5)  
 8 negligence.

9 At the outset, this Court notes that it does not have diversity jurisdiction over this case as  
 10 the Defendants and Plaintiffs appear all to be citizens of Nevada. *Morris v. Princess Cruises, Inc.*,  
 11 236 F.3d 1061, 1067 (9th Cir. 2001) (“Section 1332 requires complete diversity of citizenship;  
 12 each of the plaintiffs must be a citizen of a different state than each of the defendants.” Thus, the  
 13 only basis for this Court to exercise jurisdiction would be federal-question jurisdiction.

#### 14 **A. Defendants**

##### 15 **i. Public Utility Commission of Nevada (PUCN)**

16 First, the PUCN is an “arm of the state” and was created pursuant to NRS 703.020. As a  
 17 result, it is not a “person” and cannot be sued under 42 U.S.C. § 1983. *Sable Communications of*  
 18 *California, Inc. v. Pacific Tel. & Tel. Co.*, 890 F.2d 184, 191 (9th Cir. 1989) (holding that “the  
 19 CPUC is not a ‘person’ for the purposes of section 1983 and therefore cannot be sued under that  
 20 statute”). Thus, this Court recommends that PUCN be dismissed with prejudice.

##### 21 **ii. City of Las Vegas Code Enforcement Division**

22 A public agency is not a person or entity subject to suit unless that agency is a separate  
 23 legal entity. *Harvey v. Estes*, 65 F.3d 784, 791–92 (9th Cir.1995). Under Federal Rule of Civil  
 24 Procedure 17(b), an entity’s capacity to be sued is determined under Nevada state law. Fed. R.  
 25 Civ. Proc. 17(b). In Nevada, “[i]n the absence of statutory authorization, a department of the  
 26 municipal government may not, in the departmental name, sue or be sued.” *Wayment v. Holmes*,  
 27 912 P.2d 816, 819 (Nev. 1996). The proper defendant is instead the municipality itself, not a  
 28 department of the municipality.

1 Municipal entities, such as the city of Las Vegas, “cannot be held liable under § 1983 on a  
 2 respondeat superior theory.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691, (1978). Under  
 3 Ninth Circuit precedent, a plaintiff may recover under *Monell* based on one of three theories.  
 4 *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249–50 (9th Cir. 2010), *overruled on other*  
 5 *grounds by Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016). First, “a local  
 6 government may be held liable ‘when implementation of its official policies or established  
 7 customs inflicts the constitutional injury.’” *Id.* at 1249 (quoting *Monell*, 436 U.S. at 708). Second,  
 8 “under certain circumstances, a local government may be held liable under § 1983 for acts of  
 9 omission, when such omissions amount to the local government’s own official policy.” *Id.*  
 10 (internal quotation marks omitted). Third, “a local government may be held liable under § 1983  
 11 when the individual who committed the constitutional tort was an official with final policy-  
 12 making authority or such an official ratified a subordinate’s unconstitutional decision or action  
 13 and the basis for it.” *Id.* at 1250 (internal quotation marks omitted).

14 Thus, should Plaintiffs wish to amend their complaint to name the city of Las Vegas as a  
 15 defendant they will need to allege facts that support liability under *Monell*.

### 16 **iii. Nevada Energy**

17 As explained above, private parties cannot be held liable under 42 U.S.C. § 1983 unless  
 18 they conspired or entered joint action with a state actor.” *Crowe v. Cty. of San Diego*, 608 F.3d  
 19 406, 440 (9th Cir. 2010) (quotation omitted). It is not clear what actions Nevada Energy is  
 20 responsible for or the manner in which they conspired with a state actor. Thus, should Plaintiffs  
 21 wish to include Nevada Power as a defendant, they must properly allege these facts.

## 22 **B. Claims**

### 23 **i. Fourteenth Amendment’s due-process clause**

24 To prevail on a procedural-due-process violation based on the opportunity to be heard,  
 25 plaintiffs “must prove two distinct elements: (1) a deprivation of a constitutionally protected  
 26 liberty or property interest, and (2) a denial of adequate procedural protections.” *United States v.*  
 27 *101 Houseco, LLC*, 22 F.4th 843, 851 (9th Cir. 2022) (cleaned up).

The first question is whether Plaintiffs have adequately alleged a constitutionally protected liberty or property interest. “In the context of provision of electrical services, a vested right exists if plaintiff can establish a ‘legitimate claim’ to continued electricity.” *Autotek, Inc. v. Cnty. of Sacramento*, 2020 WL 4059564, at \*17 (E.D. Cal. July 20, 2020) (“Autotek II”), *aff’d sub nom. Lull v. Cnty. of Sacramento*, 2022 WL 171938 (9th Cir. Jan. 19, 2022). “The extent, scope and conditions of a right to continuing electricity are created and defined by state and local rules, and those same rules therefore delineate when one has a claim of entitlement to continued service.” *Autotek Inc. v. Cnty. of Sacramento*, 2018 WL 836383, at \*2 (E.D. Cal. Feb. 13, 2018) (“Autotek I”). “Where a state or local law restricts the ability of a municipal utility provider to terminate service, customers of the provider have a protected property interest in the continuation of service.” *Field v. La Paz Cnty.*, 2006 WL 8440645, at \*10 (D. Ariz. Apr. 27, 2006); *see also Frates v. Great Falls*, 568 F. Supp. 1330, 1337 (D. Mont. 1983) (“[A] specification of reasons, for which services may be terminated, amounts, in essence, to a recognition that termination may be for cause only, and clearly refutes the conclusion that the utility or governing body has a right to terminate services at will.”). Plaintiffs have not alleged any facts to support that they had a protected property interest in the continuation of service. While not much is needed, Plaintiffs must include some factual allegations explaining their right to continued service.

Equally important, it is not clear that Plaintiffs were denied adequate procedural protections. That is, Plaintiffs themselves represent that the PUCN held a hearing at which their case was presented by a PUCN staffer. ECF No. 14 at 6. This claim will therefore be dismissed with leave to amend.

## **ii. Fourteenth Amendment’s equal-protection clause**

The Fourteenth Amendment’s equal-protection clause provides that states must not “deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (cleaned up). To state an equal-protection claim, “a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the

1 plaintiff based upon membership in a protected class.” *Lee v. City of Los Angeles*, 250 F.3d 668,  
2 686 (9th Cir. 2001).

3 Plaintiffs have not alleged membership in a protected class, nor have they explained how  
4 the Defendants’ decision to disconnect their power is motivated by discriminatory intent. As a  
5 result, this claim will be dismissed with leave to amend.

### 6 **iii. Administrative Procedure Act (APA)**

7 Generally, the APA permits suits against the United States by “[a] person suffering legal  
8 wrong because of agency action, or adversely affected or aggrieved by agency action within the  
9 meaning of a relevant statute.” 5 U.S.C. § 702. For purposes of the APA, the term “agency” is  
10 defined to “mean[ ] each authority of the Government of the United States, whether or not it is  
11 within or subject to review by another agency,” with the exclusion of Congress, the federal  
12 courts, U.S. territory and possession governments, the District of Columbia, and several others  
13 not relevant here. 5 U.S.C. § 706(b)(1).

14 Here, Plaintiffs do not seek to compel action by any federal agency within the meaning of  
15 the APA. Rather, Plaintiffs complain about the alleged actions of the PUCN, the City of Las  
16 Vegas and Nevada Energy. As a result, this Court recommends this claim be dismissed with  
17 prejudice.

### 18 **iv. Coercion and Negligence**

19 The supplemental-jurisdiction statute provides that, “in any civil action of which the  
20 district courts have original jurisdiction, the district courts shall have supplemental jurisdiction  
21 over all other claims that are so related to claims in the action within such original jurisdiction  
22 that they form part of the same case or controversy under Article III of the United States  
23 Constitution.” 28 U.S.C. § 1367(a). Courts in this circuit have explained that where state-law  
24 claims arise from the same nucleus of operative fact as federal claims, a district court may  
25 properly invoke its supplemental jurisdiction over the state-law claims. *See Bahrampour v.*  
26 *Lampert*, 356 F.3d 969, 978 (9th Cir.2004).

27 Plaintiffs loosely allege coercion and negligence as causes of action, which are based on  
28 state law. But since Plaintiffs must successfully state a federal claim to proceed with the case, this

1 Court will not screen these potential state-court claims at this time. *See Carnegie-Mellon Univ. v.*  
 2 *Cohill*, 484 U.S. 343, 350 n.7 (1988) (“[I]n the usual case in which all federal-law claims are  
 3 eliminated before trial, the balance of factors to be considered under the pendent jurisdiction  
 4 doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to  
 5 exercise jurisdiction over the remaining state-law claims.”).

### 6 **C. Instructions for amendment**

7 Plaintiffs are advised that if they file a second amended complaint, the previous amended  
 8 complaint (ECF No. 14) will no longer serve any function in this case. The court cannot refer to a  
 9 prior pleading or to other documents to make Plaintiffs’ amended complaint complete. The  
 10 second amended complaint must be complete in and of itself without reference to prior pleadings  
 11 or to other documents.

### 12 **III. CONCLUSION**

13 **IT IS ORDERED** that Plaintiffs’ Motions/Applications for Leave to Proceed *In Forma*  
 14 *Pauperis* (ECF Nos. 15 and 16) are **GRANTED**.

15 **IT IS FURTHER ORDERED** that Plaintiffs’ amended complaint is dismissed with  
 16 limited leave to amend.

17 **IT IS RECOMMENDED** that Plaintiff **not be granted leave** to add the following  
 18 defendants in her second amended complaint:

- 19 • Public Utility Commission of Nevada (PUCN)
- 20 • City of Las Vegas Code Enforcement Division

21 **IT IS FURTHER RECOMMENDED** that Plaintiff **not be granted leave** to add the  
 22 following claims in her second amended complaint:

- 23 • Violation of Administrative Procedure Act (APA)

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## NOTICE

DATED: September 24, 2025

  
BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE